IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1351 OF 2006

Vijay Panditrao Dokhale & Ors. .. Petitioners.

V/s.

Rakmabai Ramchandra Dokhale & Ors. .. Respondents.

Mr. P.L.Bhujbal for the Petitioners.

Mr.Ramesh Dube-Patil i/by M/s.Jay & Co. for the Respondent No.4.

CORAM : R.M. SAVANT, J.

DATED : 04th JUNE, 2007.

P.C.:

. Rule. Rule, with the consent of the parties is made returnable forthwith and heard finally.

2. This petition filed under Article 227 of the Constitution of India, impugns the order dated 27.07.2005 passed by the Addl. Divisional Commissioner, Nasik in Revision Application No. 205 of 2005 and the judgment and order dated 19.12.2005 passed in the Review Application No. 237 of 2005. The said Revision Application was rejected by the order passed by the Sub-Divisional Officer, Nasik in encroachment application bearing No. 106 of 1992. The Respondent is the owner of the land bearing Gut No. 16 at village

Khedgaon, Tal. Dindori. The petitioner Nos. 1 to 7 herein are the owners of the land on the Northern side, bearing gut No. 19A/1 and 2. Petitioner Nos. 8 and 9 are the owners of the land on the southern side bearing gut No. 15. It is pertinent to note that the total area of the land in gut No.16 was admeasuring 1 Acre 97 Aars. It appears that one Ramchandra Dokhale, made an application for carrying out survey in which it was disclosed that the said land was encroached by 10-R from the northern side and southern side respectively. The said Ramchandra, therefore, filed encroachment case No.106 of 1992 before the Sub-Divisional Officer, Nasik on the basis of Survey measurement. Thereafter, Nimtana Mojani as per the meeting held on 28.9.1993 was carried out, wherein it was found that the land was encroached by 25-R from northern side and 6 R from southern side. Accordingly, an application was made for amending the prayer before the learned SDO, Nasik.

3. In the meantime, the respondents herein sold 40 Ares from gut No.16 to one Mr.Vasant Y.Bhagare on 29.10.1994. The respondent again sold out 1H 37R out of land bearing gat No.16 to one Mandatai Dhawange. After the said sales, the land remaining with the Respondents was only 20R out of 1 H 97 R. The said third parties were joined as parties to the said encroachment

proceedings, wherein they have admitted that they were put in possession of the respective areas sold by the respondent No.4 therein.

4. The said encroachment case came to be allowed by the SDO by order dated 23.12.2003, by which order he directed that the possession of the encroached area should be handed over to the respondent No.4 herein. The said order of the SDO was challenged by the petitioners by filing RTS Appeal No. 63/2003 before the Addl.Collector Nasik. It appears that the Addl.Collector, Nasik allowed the appeal of the petitioners. Thereafter, the respondents filed revision application No. 205 of 2004 before the Addl. Divisional Commissioner Nasik, which came to be allowed by the said Revisional Authority on 27.5.2005. The Divisional Commissioner directed the SDO to hand over the possession of near about 31R to the respondent. The petitioners, thereafter, filed Review Application No. 237 of 2005, which application came to be rejected on the ground that no case for review was made out by the petitioners. As a result, the petitioners challenge in the present petition the order dated 27.7.2005 passed in Revision and the order dated 19.12.2005 passed in the review application No. 237/2005.

5. I have heard the learned counsel for the petitioners Shri Bhujbal and the learned counsel Shri Ramesh Dube for the contesting respondents. It is contended on behalf of the petitioners that the orders passed by the authorities below are unsustainable in view of the admitted facts. The order directing to return 31 Ares to the respondent is not sustainable in view of the fact that it is an admitted position that an area of 1 H 97 R has already been sold by the respondents to third parties and, therefore, what was remaining was only 20 R out of 1H 97R with the respondent. The learned counsel for the petitioners drew my attention to the statement made on behalf of the third party in the said proceedings, wherein the third parties have admitted that the area sold had been handed over to them and they are in possession. The learned counsel for the petitioners further submits that the said fact has been ignored by the revisional authority in directing the return of 31 Ares.

6. On the other hand the learned counsel for the Respondents Shri Dube submits that the respondents had been agitating the said issue of removal of encroachment since the year 1981. The petitioners who are the encroachers have tried to stall the proceedings relating to the encroachment case. The learned counsel further

submits that the respondents are entitled to at least 20 Ares as per the petitioners own showing.

7. I have bestowed my anxious consideration to the rival contentions. In the teeth of the undisputed fact that an area of 1H and 97 Ares has already been sold by the respondents to third parties, the order passed in the appeal, directing to hand over 1 H 31 Ares of the area encroached to the respondents, in my view, cannot be sustained. More over, the said fact has also been not considered by the revisional authority while dealing with the revision filed by the petitioners. The said aspect, in my opinion, goes to the root of the matter. May be the Respondents on actual measurement, would still be entitled to an area which has been encroached upon by the petitioners, that area would have to be less than 31 Ares, if we go by the mathematical calculation. As indicated above, the revisional authority ought to have dealt with the said issue from the said angle also. Having not done so, the impugned orders dated 27.07.2005 and 19.12.2005 cannot be sustained and are required to be set aside and are accordingly set aside and the matter is remanded back to the revisional authority for consideration afresh.

8. On remand, the revisional authority would take

into consideration the said fact in respect of which the necessary material by way of documentary evidence has been placed on record. The revisional authority is directed to decide the revision within three months from date. The parties would be at liberty to apply for fresh survey and demarcation, if they so choose.

9. Rule is made absolute in the aforesaid terms with parties to bear their own costs.

10. Parties to act on a copy of this order duly authenticated by the Sheristedar of the court.

(R.M.SAVANT,J.)

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